

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 19 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

MAGANBHAI KARSANBHAI

Versus

NAGARBHAI PIRJIBHAI

Appearance:

MR BJ JADEJA for Petitioners
MR PK JANI for Respondent No. 1
RULE SERVED for Respondent No. 11

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 23/02/2001

ORAL JUDGEMENT

#. The petitioners herein are the original defendants against whom the respondents have filed the suit being Regular Civil Suit No.43/91 pending in the court of the

Civil Judge (Junior Division), Olpad.

#. It is the case of the plaintiffs that, they are owners and occupants of the agricultural land situated at village Kapasi, Taluka Olpad, District Surat and that they are cultivating the land and taking the crops from the said land. For the purpose of their agricultural operations, they are using the road for passing and repassing by cart etc. through eastern side of land bearing Block No.10 which belongs to the defendants. It is the case of the plaintiffs that, they are using the said road as of right since more than 20 years and without any interruption and with the knowledge of the defendants. The plaintiffs also stated that, since there is no other way available to them, they are using strip of the land by way of easement of necessity. Since the defendants trying to disturb their way, the said suit is filed for declaration and injunction.

#. The defendants filed their written statement and denied the averments in the plaint on various grounds. According to the defendants, there is already other road available with the plaintiffs which they are using, and therefore, there was no question of any easement of necessity. On such and other grounds, the aforesaid suit was resisted.

#. The plaintiffs also gave an application Exh.5 for interim injunction restraining the defendants from disturbing their right of way. The trial court after hearing both the sides, rejected the application Exh.5 and vacated ad-interim order earlier granted in favour of the plaintiffs. The trial court found that, there is an alternative way available to the plaintiffs and if they are allowed to pass and repass through the agricultural land of the defendants, the defendants may suffer heavy loss as the crops of the defendants may be damaged.

#. The aforesaid order of the trial court was challenged in appeal by the present respondents - original plaintiffs of the suit. The Assistant Judge, Surat who decided the said appeal being Misc. Civil Appeal No.79/94 allowed the same and injunction application given by the plaintiffs in the suit was also allowed. The defendants were restrained from disturbing the plaintiffs from using the disputed way for coming and going to the respective fields through Block No.10 till the suit was finally disposed of.

#. The aforesaid order of the appellate court is challenged in the present revision application by the

original defendants.

#. At the time of hearing of this revision application, Mr. Jadeja for the petitioners - original defendants of the suit argued that this court while admitting the revision application had stayed the order of the appellate court and still the plaintiffs are using the disputed strip of land. He further argued that, since there is an alternative way available, there is no question of any easement of necessity and that by passing through the land in question of the defendants, the defendants are suffering heavy damages to their crops. He, therefore, argued that the appellate court should not have allowed the appeal which is against the interim order of the trial court. Alternatively, he submitted that, in any case, the suit in question is required to be disposed of at the earliest so that they may not suffer inconvenience for a long time.

#. Against the aforesaid arguments, Mr. Unwala for the respondents argued that, this being a revision application under section 115 of the Civil Procedure Code, the same is not maintainable in view of the judgment of the Supreme Court reported in AIR 1973 page 76. He further argued that, since considerable time, the plaintiffs are using the land in question and that except this there is no way available for them for which they can utilise for passing and repassing to their agricultural land. He pointed out that the appellate court has considered all the facts and circumstances of the case and even on merits, the said order is not required to be interfered with by this court.

#. After considering the arguments of both the sides, I am of the opinion that, even though, this court has stayed the order, the original plaintiffs are still using the strip of land and the said fact is not as such in dispute. Therefore, now at this stage, it will not be proper to restrain them by injunction from using the strip of the land in question till the dispute between the parties is adjudicated by the trial court by taking appropriate evidence on record. This revision application is purely at an interlocutory stage and it cannot be said that the appellate court has committed any error of jurisdiction in deciding the appeal.

##. In that view of the matter, it would not be proper to interfere with the order of the appellate court which is impugned in this revision application. Instead, I may direct the trial court to dispose of the main suit itself on or before 30.6.2001. The aforesaid direction for

disposal of the suit is required to be granted as the learned advocate Mr.Jadeja has pointed out that, since so many village people are passing and repassing through the land in question, the petitioners are not in a position to cultivate their land effectively. However, this court has not expressed any opinion on merits one way or other, but in any case, ultimately, the dispute of such nature is required to be adjudicated at the earliest. Since the suit is filed as back as in 1991, it is necessary that the same is now to be disposed of at the earliest. In that view of the matter, therefore, the direction for early disposal has been given. The learned trial Judge will see that, Regular Civil Suit No.43/91 should be disposed of latest by 30/6/2001.

##. It is also clarified that, this court has not expressed any opinion on the merits of the dispute between the parties. While deciding the suit, the trial court will not take into consideration the observations which might have been made either by the trial court or the appellate court while deciding the interim injunction application and the suit may be disposed of as per the evidence which might be led by the parties without in any way influenced by any of the order of the courts below.

##. It is also directed that the plaintiffs while passing and repassing through the land in question, may not cause any damage either to the standing crops or to the soil of the defendants in any manner. The injunction granted by the appellate court is confirmed with a view to see that, during the pendency of the suit, position prevailing may not be allowed to be changed. However, ultimately the dispute is required to be adjudicated after allowing the parties to lead appropriate evidence in this behalf.

##. This revision application, therefore, is not entertained and the same is accordingly dismissed. Rule is discharged with no order as to costs, but subject to the direction of disposing of the suit as stated earlier. Interim relief stands vacated.

(P.B.Majmudar,J)
(pathan)